

***DIVISION OF WATER RIGHTS  
SOUTHWESTERN REGIONAL OFFICE  
CEDAR CITY, UTAH***

**FACSIMILE TRANSMITTAL COVER SHEET**

TO: John Mabey - DNR / Attorney General's Office  
FAX: (801)538-7440

FROM: Kerry Carpenter, Southwestern Region

DATE: 30 March 1999

NUMBER OF PAGES (INCLUDING THIS COVER SHEET):3

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CALL (435)586-4231

OUR FAX TELEPHONE NUMBER IS: (435)586-2789

ORIGINAL COPY TO FOLLOW BY MAIL: NO

**MESSAGE:**

**The following page is a copy of the "tag" that I have for possible use in the Howard Marshall enforcement. The next following page is a memo addressing related matters. You may want to give Lee's office a copy of this.**

*Lee*

**MEMORANDUM**

**TO:** John H. Mabey, Jr. / Assistant Attorney General / DNR  
**FROM:** Kerry Carpenter, Southwestern Regional Engineer  
**DATE:** 30 March 1999  
**RE:** Howard Marshall enforcement action

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1) General information:

The renter at Howard Marshall's farm is Mr. Rick Albright. His physical address is 1355 East 5300 South (Milford); his mailing address is PO Box 232 / Milford UT 84751; his telephone number is (435)387-2017. Mr. Albright has been advised that he will have legal liability if he cooperates with Mr. Marshall in irrigating the illegal acreage. Mr. Albright has stated that he will refuse to activate or operate the irrigation facilities. He has offered to be totally cooperative and said that if we will arrange to perform the "tagging" of the valve on a Tuesday or Thursday, he will assist by pointing out the specific valve which activates the irrigation portion of the system. Mr. Albright has also offered to make available upon request a copy of a spreadsheet he maintained last year showing his irrigation activities during the 1998 season.

2) Regarding the draft complaint:

¶3 - The property is located almost due south of Milford, perhaps a little southeast. I'm sure "south" or "southeast" would do. Following this paragraph, the defendant is referenced only as "Marshall". Is there a need for one of those little devices that says "(hereinafter, 'Marshall')"?

¶15 - I don't know if there is an "official" name for the system. The name you have used sounds fine to me. I expect John Larsen or Lee Sim can tell you if there is an official title. The term "Milford Valley" is used consistently throughout the complaint (¶18, 19, 21, 22.b), so if that name is changed, you'll have to chase down all those repetitions.

¶20 - I doubt if Howard was notified of the meetings. To my knowledge, notices go only to parties associated with an established distribution account. Because Howard has no irrigation right, there would be no distribution account.

¶21 - If ¶20 is deleted because notice was not given, we'll also need to delete the part of this paragraph that says: "... that the Milford Valley Water users had agreed to enforcement by irrigated acreage in the Milford area, . . .".

¶22.c - Is there any chance (or desire) we can cite 73-3-3 which makes a "change" without authority a Class B misdemeanor? I can see how it could be argued that this is not a "change", given that the approved uses are continuing, but I was just wondering.

3) Extraneous but interesting information:

Lyle Carter (et.al.) have purchased the Greg Marshall farm!! Lyle is coming in to our office tomorrow to file a temporary change to move enough water for two pivots to the farm. Ultimately, Carter's intend to file a permanent change on more of their Hay Springs water to either cover the Greg Marshall farm directly, or to replace some of their other rights that they will move to the Marshall farm permanently. This ought to be interesting. . . . .

THIS DIVERSION WAS CLOSED BY  
THE DULY APPOINTED WATER COMMISSIONER,  
UNDER THE DIRECTION OF  
THE UTAH STATE ENGINEER.  
THIS DIVERSION MAY ONLY BE REGULATED  
UNDER HIS DIRECTION.



Signed by \_\_\_\_\_, Water Commissioner &

Signed by *Robert A. Morgan*, State Engineer of Utah

on this date.....